HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V. NAGARJUNA REDDY

W.P.M.P.NO. 14835 OF 2006
IN
WRIT PETITION NO.20730 OF 1997

O R D E R: **(PER G.S. SINGHVI, CJ)**

It is settled law that if a party to the litigation gets pecuniary or other benefit by virtue of an interim order passed by the Court and final result of the litigation is against such party, then it has to restore the pecuniary advantage to the successful litigant. If a petition filed under Article 226 of the Constitution of India is dismissed, then the petitioner cannot continue to enjoy the benefit of interim order. Rather, he is bound to restore or return the benefit to the respondent. In such an eventuality, the Court should either suo motu or on a request made by the respondent direct the petitioner to return the benefit gained on the basis of interim order passed by the Court. This view of ours is amply supported by the judgments of various High Courts and the Supreme Court including **O.N.G.C. v. Association of Natural Gas Consuming Inds.**[1] and **Style (Dress Land) v. Union Territory, Chandigarh**[2]**.**

Having noticed the relevant propositions of law and judicial precedents, we may now advert to the facts necessary for deciding the miscellaneous petition filed by Singareni Collieries Company Limited for issue of a direction to the non-petitioner – A.P. Paper Mills Limited for refund of Rs.1,33,22,801-00.

The petitioner is a Government company within the meaning of Section 617 of Indian Companies Act. It is engaged in the excavation, extraction and winning of coal in the four districts of Andhra Pradesh viz. Khammam, Karimnagar, Adilabad and Warangal. The coal extracted by the petitioner is sold to the consumers engaged in the manufacture of power, cement, steel, fertilizers, paper, chemicals, brick kiln etcetera. Till the year 1996, the coal was a controlled commodity. After decontrol, the petitioner issued notification dated 14.03.1997 declaring the prices of coal of various grades. It was also made clear that the un-linked customers will be charged 20% over and above the notified price. The non-petitioner – A.P. Paper Mills Limited challenged that notification in Writ Petition No.20730 of 1997. It also filed W.P.M.P.No.25149 of 1997 for staying the charging of 20% additional price. By an interim order dated 30.08.1997, a learned Single Judge of this Court stayed the collection of 20% additional price. The writ petition was finally disposed of by the Division Bench on 25.03.1998. Since that order has considerable bearing on the adjudication of the petitioner's prayer, the relevant portions thereof are extracted below:

> " In view of the statement made by the learned counsel for the respondent that the benefit of linkage has been given for the purpose of supply of coal for utilization in captive power plant and that 20% extra will not be charged in regard to that quantity the grievance of the petitioner does not survive for consideration.
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> The statement made by the learned counsel for the respondent is recorded and the respondent-Company is directed to act accordingly. It is further

> observed that if the petitioner has got any grievance regarding charging of extra price for the supplies made after the decision is taken by the company pursuant the instructions of the Ministry of Coal, it is open to the petitioner to file a representation either to the Managing Director of the company or to the Ministry of Coal and such representation shall be duly promptly considered and if any excess is collected from the petitioner, the same shall be refunded.
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> Accordingly, the writ petition is disposed of."

By taking cue from second paragraph of the above re-produced order, the non-petitioner represented to the petitioner not to charge 20% extra price on the coal supplied to it, but the latter did not agree. After some time, the non-petitioner filed Writ Petition No.16388 of 1998 and again succeeded in persuading the learned Single Judge to pass an interim order against the charging of 20% extra price. However, on an application filed by the petitioner, which was registered as W.V.M.P.No. 2098 of 1998, the Division Bench vacated the ad interim order. The second writ petition was finally dismissed by the Division Bench on 29.06.2001 along with two other writ petitions filed by The Sirpur Paper Mills Limited and West Coast Paper Mills Limited. S.L.P.Nos.13567 of 2001 and 14318 of 2001 filed by The Sirpur Paper Mills and the non-petitioner respectively were dismissed by the Supreme Court on 27.08.2001 in view of the request made by the learned counsel that their clients would file review petitions before the High Court. The review petitions preferred by the non-petitioner and others were dismissed by the Division Bench on 22.11.2002.

After about four months of the dismissal of the review petitions filed by the petitioner and two others, the management of the petitioner sent communication dated 26.04.2003 to the non-petitioner requiring it to pay the difference of price of coal for the period between 14.03.1997 and 29.08.1997. The non-petitioner contested the demand and pleaded that it is not required to pay 20% extra price in view of interim order dated 30.08.1997 and final order dated 25.03.1998 passed in Writ Petition No.20730 of 1997.

After some further correspondence, the petitioner filed this petition some time in 2005. Due to defects, the petition was returned and was refiled on 29.04.2006.

Ms. V. Uma Devi, learned counsel for the petitioner argued that the non-petitioner is under an obligation to pay the balance price of coal supplied to it during the pendency of the writ petition No. 20730 of 1997 because that petition was disposed of by the Division Bench on 25.03.1998 without granting any relief to the petitioner. Ms. Uma Devi submitted that the non-petitioner is under a legal duty to pay the difference of price in terms of notification dated 14.03.1997 and it cannot continue to take benefit of interim order dated 30.08.1997 passed by the learned Single Judge. In support of her argument, the learned counsel invoked the policy underlying Section 144 of the Code of Civil Procedure and relied on the judgment of Gujarat High Court in **Union of India v. Sahkari Khand Udyog Mandli Ltd.**[3] and those of the Supreme Court in **Kavita Trehan v. Balsara Hygiene Products Ltd.**[4] and **Union Carbide Corpn. V. Union of India**[5].

Shri V. Srinvias, learned counsel for the non-petitioner controverted the submissions of Ms. Uma Devi and argued that the petitioner is not entitled to the amount representing difference in the price actually paid by the non-petitioner and the extra price for the period between 30.08.1997 and 25.03.1998. Learned counsel emphasized that the non-petitioner has paid extra price for the entire period commencing from 14.03.1997 except the period during which interim order dated 30.08.1997 remained operative. Shri Srinivas emphasized that Writ Petition No.20730 of 1997 was disposed of by the Division Bench without examining the challenge to the legality of notification dated 14.03.1997 because counsel appearing for the present petitioner made a statement that benefit of linkage has been given for the purpose of supply of coal for utilization in captive power plant and that 20% extra will be charged in regard to that quantity. Learned counsel submitted that his client had utilized the coal supplied by the petitioner for manufacture of captive power and, therefore, it cannot be compelled to pay the so-called excess price for the period between 30.08.1997 and 25.03.1998.

We have thoughtfully considered the respective arguments and carefully scrutinized the record. A brief recapitulation of the facts leading to filing of this application reveals that in the first writ petition filed by the non-petitioner, a learned Single Judge had granted interim order on 30.08.1997, which remained operative till the disposal of the main petition on 25.03.1998 . A reading of that order shows that the Division Bench did not have the occasion to adjudicate on the legality or otherwise of the demand created by

the petitioner in terms of notification dated 14.03.1997 because learned counsel representing the respondent (petitioner herein) made a statement that the benefit of the linkage has been given for the purpose of supply of coal for utilization in captive power plant and that 20% extra will not be charged with regard to that quantity. It is thus clear that the non-petitioner cannot be said to have taken benefit of the interim order in a matter which was finally dismissed by the Court. Therefore, the principles underlying Section 144 of the Code of Civil Procedure cannot be invoked by the petitioner for seeking a direction from the Court for compelling the non-petitioner to pay Rs.1,33,22,801.22.

The judgments of the Gujarat High Court and the Supreme Court on which the learned counsel for the petitioner has placed reliance are distinguishable. In all the cases, the order for restitution was passed because the main petitions were finally dismissed. This is also the ratio of the judgment of the Supreme Court in **O.N.G.C. v. Association of Natural Gas Consuming Inds.** (supra).

For the reasons mentioned above, we hold that the petitioner has failed to make out a case for restitution of the so-called extra price of coal recoverable from the non-petitioner for the period from 30.08.1997 to 25.03.1998.

Consequently, the application is dismissed.

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G.S.SINGHVI, CJ

C.V. NAGARJUNA REDDY, J

19.10.2006

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[1] 2001(5) SCALE 25

[2] (1999) 7 Supreme Court Cases 89

[3] AIR 1981 Gujarat 102

[4] AIR 1995 Supreme Court 441)

[5] AIR 1992 Supreme Court 248